

Barbara A. Schermerhorn
Clerk

NOT FOR PUBLICATION

**UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE TENTH CIRCUIT**

IN RE CHARLES DAVID
TOLLEFSEN, also known as Chuck
Tollefsen,

Debtor.

BAP No. NO-07-057

CHARLES DAVID TOLLEFSEN,

Appellant,

v.

US BANK NATIONAL
ASSOCIATION and STEPHANIE
JOHNSON,

Appellees.

Bankr. No. 07-10268-M
Chapter 13

ORDER AND JUDGMENT*

Appeal from the United States Bankruptcy Court
for the Northern District of Oklahoma

Before NUGENT, BROWN, and THURMAN, Bankruptcy Judges.

NUGENT, Bankruptcy Judge.

After examining the briefs and appellate record, the Court has determined unanimously that oral argument would not materially assist in the determination of this appeal. Fed. R. Bankr. P. 8012. The case is therefore ordered submitted without oral argument.

Appellant/Debtor, *pro se*, appeals the bankruptcy court's dismissal of his

* This order and judgment is not binding precedent, except under the doctrines of law of the case, *res judicata*, and collateral estoppel. 10th Cir. BAP L.R. 8018-6(a).

Chapter 13 case pursuant to 11 U.S.C. § 1307(c)(1). Due to the lack of an adequate record on appeal, we AFFIRM.

I. Factual Background

Debtor filed this Chapter 13 on February 20, 2007.¹ Debtor had two creditors, US Bank National Association (“US Bank”), which holds the mortgage on his home, and Stephanie Johnson, his former spouse for child support.

On March 1, 2007, US Bank filed a Motion to Dismiss pursuant to 11 U.S.C. §§ 1307(c)(1) and 109(g)(1). An evidentiary hearing was held on April 26, 2007. On May 4, 2007, the bankruptcy court rendered its decision telephonically and read its findings and conclusions into the record pursuant to Bankruptcy Rule 7052. The bankruptcy court entered Judgment and dismissed Debtor’s bankruptcy case. This appeal follows.

Debtor claims the bankruptcy court erred because it never had valid proofs of claim from any of the creditors, thus his case was prematurely dismissed. On August 21, 2007, US Bank filed a motion to dismiss the appeal based on Debtor’s failure to present an adequate record from which to consider the appeal. US Bank also argues that Debtor is an abusive filer and dismissal was warranted.

II. Jurisdiction

We have jurisdiction over this appeal. The judgment from which Debtor appeals is final for purposes of appeal, and the parties have consented to this Court’s jurisdiction by failing to elect to have the appeal heard by the United States District Court for the District of Northern Oklahoma.²

¹ Debtor previously filed a Chapter 13 on November 27, 2006 and it was dismissed on February 7, 2007 for document deficiency. Debtor also previously filed a Chapter 7 petition in January 2006, and received a discharge on September 13, 2006.

² 28 U.S.C. § 158(a)(1) & (c)(1); Fed. R. Bankr. P. 8001-8002; 10th Cir. BAP L.R. 8001-1; *see Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 712 (1996) (order is final if it “ends the litigation on the merits and leaves nothing for the

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III. Standard of Review

The decision to dismiss or convert a Chapter 13 case for cause is within the sound discretion of the bankruptcy court and is reviewed for an abuse of discretion.³

IV. Discussion

Debtor claims abuse of discretion because he was prevented from preparing a plan due to the inaccuracies of his creditors' proofs of claim. Debtor, however, did not attach a transcript of the bankruptcy court's oral rulings on May 4, 2007 to his appendix, nor did he append the allegedly deficient proofs of claim. Instead, Debtor appended a partial transcript of the April 26, 2007 evidentiary hearing to support his claim that no valid proofs of claim were before the bankruptcy court and that US Bank admitted its proofs of claim were incorrect.⁴ This transcript, however, does not shed any light on the evidence before bankruptcy court.

The burden of providing an appellate court with an adequate record for review is on the appellant.⁵ The record on appeal shall include "the notice of appeal, the judgment, order, or decree appealed from, and any opinion, findings of fact, and conclusions of law of the court."⁶ As a general rule, the Tenth Circuit

² (...continued)
court to do but execute the judgment.'") (quoting *Catlin v. United States*, 324 U.S. 229, 233 (1945)).

³ *In re Armstrong*, 303 B.R. 213, 218 (10th Cir. BAP 2004).

⁴ Transcript *in* Appellant's Appendix at 19-23. This is a misstatement of the evidence. There was no admission of error by US Bank in the transcript provided. Indeed, this transcript simply contained arguments made by Debtor's counsel.

⁵ Fed. R. App. P. 10(b)(2).

⁶ Fed. R. Bankr. P. 8006; Fed. R. Bankr. P. 8009(b)(3) (stating that the appendix to a brief shall include "[t]he judgment, order, or decree from which the
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has held that the failure to provide a trial transcript on appeal warrants affirming the trial court when the issue on appeal requires the appellate court to review the record in the trial court.⁷ This rule is appropriate because when an appellant has failed to provide a reviewing court with an adequate record, the appellant has failed to provide evidentiary support for his or her appellate argument.⁸ Courts often conclude “lack of a required transcript leaves [the court] with no alternative but to affirm.”⁹

Without the transcript of the bankruptcy court’s ruling or the allegedly defective proofs of claim, this Court has no way to review whether the bankruptcy court abused its discretion. If an appellant urges that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant shall include in the record a transcript of all evidence relevant to such finding or conclusion.¹⁰ It is appellant’s responsibility to ensure that a relevant transcript is provided, and this Court is under no obligation to remedy any failure of appellant to provide a sufficient record.¹¹ Here, the failure to provide this Court with the

⁶ (...continued)
appeal is taken”); Fed. R. Bankr. P. 8009(b)(5) (stating that the appendix shall include “[t]he opinion, findings of fact, or conclusions of law filed or delivered orally by the court . . .”).

⁷ *McGinnis v. Gustafson*, 978 F.2d 1199, 1201 (10th Cir.1992) (affirming the district court upon a determination that the appellant’s failure to include a transcript of the district court’s oral ruling “raises an effective barrier to informed, substantive appellate review”).

⁸ *Id.*

⁹ *Id.*, see also *Morrison Knudsen Corp. v. Fireman’s Fund Ins. Co.*, 175 F.3d 1221, 1238 (10th Cir. 1999).

¹⁰ Fed. R. App. P. 10(b)(2).

¹¹ See *Deines v. Vermeer Mfg. Co.*, 969 F.2d 977, 979 (10th Cir. 1992).

required transcript is grounds for summary affirmance.¹²

V. Conclusion

Given the state of the record on appeal, the judgment of the bankruptcy court is AFFIRMED. US Bank's motion to dismiss is DENIED as moot.

¹² See *Wopsock v. Nordwall*, 180 F. App'x 6, 8 (10th Cir. 2006) (summary affirmance based on failure of plaintiffs to include in their appendix the documents that control the resolution of the issues on appeal, namely, the dispositive motions and accompanying memoranda upon which the district court acted in dismissing plaintiffs' complaint; deprives them of the right to challenge the judgment of the district court.); *In re Black*, 130 F. App'x 205, 206 (10th Cir. 2005) (Tenth Circuit affirms BAP's affirmance of bankruptcy court rulings because of the insufficiency of appendix); *Travelers Indem. Co. v. Accurate Autobody, Inc.*, 340 F.3d 1118, 1120-21 (10th Cir. 2003) (appeal and cross-appeal summarily affirmed due to the parties' failure to provide a copy of the insurance policy in the record on appeal); *Anstine v. Centex Home Equity Co., LLC (In re Pepper)*, 339 B.R. 756, 761 (10th Cir. BAP 2006) (without a transcript and exhibits from the trial, this court cannot review the bankruptcy court's factual findings and will summarily affirm this decision of the bankruptcy court); *In re Farwell*, 294 B.R. 198 (10th Cir. BAP 2003) (unpub. decision) (without a transcript, we have an inadequate record, giving us grounds to summarily affirm the bankruptcy court.); *In re Inkster*, 271 B.R. 213 (10th Cir. BAP 2001) (unpub. decision) (when the record on appeal fails to include copies of the documents necessary to decide an issue on appeal, this Court is unable to rule on that issue and may summarily affirm the bankruptcy court); and *Lopez v. Long (In re Long)*, 255 B.R. 241, 245 (10th Cir. BAP 2000) (same).